

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER MISCELLANEOUS  
DECISION NO. M-437 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE.

In the Matter of:

EDWARD T. OWENS  
S.S.A. No.

PRECEDENT  
BENEFIT DECISION  
No. P-M-345

FORMERLY MISCELLANEOUS DECISION No. M-437
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The above-named petitioner on May 16, 1949, appealed from the decision of a Referee (LA-M-1023) which held that the petitioner had been overpaid benefits in the amount of \$80.00 and that he was liable for the repayment thereof under the provisions of Section 64 of the Unemployment Insurance Act /now sections 1375 and 1376 of the Unemployment Insurance Code/.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant registered for work and filed a claim for benefits in the Los Angeles office of the Department of Employment on February 12, 1946. Thereafter he secured employment with one of the major motion picture studios as a sign painter and continued to work until August 25, 1946, when he obtained an indefinite leave of absence to visit with relatives in an eastern state. On or about September 30, 1946, the claimant returned to Los Angeles but made no attempt to return to work because the union of which he was a member was involved in a trade dispute with his employer.

On October 7, 1946, the claimant filed an additional claim for benefits in the Los Angeles office of the Department. Thereafter, he was paid benefits in the amount of \$20.00 per week for the four-week period ending November 3, 1946. On November 19, 1946, the Department issued a determination which held the claimant ineligible for benefits

for an indefinite period commencing September 8, 1946. Based upon a finding that he had left his work because of a trade dispute and that his continued unemployment was due to the fact that the dispute was still in active progress. The claimant appealed therefrom to a Referee who affirmed the determination and upon further appeal to the Appeals Board the decision of the Referee was affirmed.

On February 4, 1949, the Department issued a notice of assessment charging the petitioner with liability for repayment of \$80.00 in benefits overpaid to him for the four-week period from October 7, 1946, to November 3, 1946, during which period he was ineligible for benefits. The petitioner duly appealed to a Referee who, after hearing, issued a decision affirming the assessment.

The record discloses that the benefits paid to the petitioner which resulted in the overpayment were not obtained by fraud, misrepresentation, or wilful nondisclosure.

#### REASONS FOR DECISION

The provisions under which a petitioner or claimant who is alleged to have been overpaid benefits shall, or shall not, be held liable for the repayment thereof are contained in Section 64 of the California Unemployment Insurance Act [now sections 1375 and 1376 of the California Unemployment Insurance Code]. This section provides in part as follows:

"(a) Any person who is overpaid any amount as benefits under this act to which he is not entitled shall become liable for such amount; provided, that in the absence of fraud, misrepresentation or wilful nondisclosure, such person shall not be liable for an amount of overpayment received without fault on his part where the recovery thereof would be against equity and good conscience. The amount of the overpayment and the basis thereof shall be assessed to the liable person; provided, that, in the absence of fraud, misrepresentation, or wilful nondisclosure, every notice of assessment shall be mailed or personally served not later than one year after the close of the benefit year in which the overpayment was made."  
(Emphasis added)

Section 6(q) of the Unemployment Insurance Act now section 1276 of the Unemployment Insurance Code<sup>7</sup> provides in part as follows:

"(q) 'Benefit year', with respect to any individual, means the one-year period beginning with the first day of the week with respect to which the individual first files a valid claim for benefits and thereafter the one-year period beginning with the day on which such individual again files a valid claim after the termination of his last preceding benefit year."

In the instant case the petitioner first filed a valid claim for benefits on February 12, 1946. Under the definition set forth above the "benefit year" with respect to this claim expired on February 11, 1947. Under Section 64 of the Act now sections 1375 and 1376 of the code<sup>7</sup> every notice of assessment must be mailed or personally served not later than one year after the close of the benefit year in which the purported overpayment was made unless fraud, misrepresentation, or wilful nondisclosure is established. The notice of assessment in this case was not mailed until February 4, 1949, which is more than one year beyond the expiration of the petitioner's benefit year in which the purported overpayment was made. We have found that there was a total absence of fraud, misrepresentation or nondisclosure in this case. Under these facts we conclude that the assessment was barred by the time limitations specified in Section 64 of the Act now section 1376 of the code<sup>7</sup> and that the petitioner may not be held liable for the purported overpayment.

#### DECISION

The notice of assessment is held invalid. The decision of the Referee is set aside. The petitioner is held not liable for the purported overpayment.

Sacramento, California, July 29, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL (Absent)

P-M-345

Pursuant to section 409 of the Unemployment Insurance Code, the above Miscellaneous Decision No. M-437 is hereby designated as Precedent Decision No. P-M-345.

Sacramento, California, May 3, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

## DISSENTING OPINION

I dissent.

The legislature in §409 of the Unemployment Insurance Code empowered this Board to designate certain of its decisions as "precedents." The legislature further provided that "precedent" decisions of the Board will be controlling insofar as the Employment Development Department, Department of Benefit Payments, and Administrative Law Judges are concerned. Implicit in that legislative enactment is the premise that the subject matter of "precedent" decisions be interpretive of statutes in the Unemployment Insurance Code. Had the legislature intended simply that the Board reiterate statutes from the Code, the legislative provision that "precedents" be binding upon the specified departments and the Administrative Law Judges would have been unnecessary. The legislature having stated that express provision, it is mandatory that the Board give meaning thereto.

Effect and meaning must be given to every part of the statute being construed - to every section, sentence, clause, phrase, and word (D. Ginsberg & Sons v. Popkin, 285 U.S. 204). Moreover, a statute must be construed as a whole because it is not to be presumed that the legislature has used any useless words (Stephen v. Cherokee Nation, 174 U.S. 445).

I submit that the 28-year-old case being annointed with "precedent" status by my colleagues is nothing more than a reiteration of the one-year statute of limitations set forth in §1376 of the Code. The case simply says that when the Department gives notice of overpayment beyond the one-year statute of limitations, such notice is invalid. §1376 says exactly the same thing. The case adds nothing interpretive or illustrative to the statutory provision (if indeed any illumination of the plain meaning of the code section is needed). An Administrative Law Judge confronted with similar facts today would have to do no more than cite §1376 as the dispositive authority for decision. Burdening his decision with a "precedent" that is no more than a mirror image of the statute is obiter surplusage.

Under the California Rules of Court, an appellate decision which adds nothing to the body of interpretive law, and merely parrots statutory provisions as is the case here, is not considered of precedential value and would not be published in the official reports. This Board would be better advised to have adhered to that rule in this case.

HARRY K. GRAFE